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Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 00-41/
Table of Allotments,)	RM-9369
FM Broadcast Stations.)	
(Oakville, Raymond, and South Bend,)	
Washington))	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 9, 2002

Released: January 18, 2002

By the Chief, Allocations Branch:

1. The Allocations Branch has before it the Notice of Proposed Rule Making, 15 FCC Rcd 4988 (2000) (“Notice”), issued in response to a petition for rule making filed by Jodesha Broadcasting, Inc. (“Jodesha”), licensee of Station KFMY, Channel 249C1, Raymond, Washington, and licensee of Station KJET, Channel 289C2, South Bend, Washington. The Notice proposed the reallocation of Channel 249C1 from Raymond to Oakville, Washington, and the modification of Station KFMY’s license accordingly; the reallocation of Channel 289C2 from South Bend to Raymond and the modification of Station KJET’s license accordingly; and the allotment of Channel 300A to South Bend. Jodesha has filed Comments and Reply Comments, while 3 Cities, Inc., licensee of Station KXXO, Olympia, Washington, has filed “Comments in Opposition to Proposed Rulemaking,” Reply Comments, and “Supplement to Reply Comments.”¹ For the reasons stated in this Report and Order, we grant Jodesha’s petition for rule making.

2. Jodesha filed its request pursuant to the provisions of Section 1.420(i) of the Commission’s Rules, which permits the modification of a station’s authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.² Each of Jodesha’s reallocation proposals is mutually exclusive with the allotment it is presently using, as required by Section 1.420(i) of the Rules. In considering a reallocation proposal, we compare the existing allotment versus the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. This determination is based upon the FM allotment priorities set forth in Revision

¹ Jodesha filed a Motion to Strike 3 Cities’ Supplement to Reply Comments and 3 Cities filed an Opposition to Jodesha’s Motion to Strike. We shall consider 3 Cities’ Supplement to Reply Comments in order to assure a complete record in this proceeding. See, e.g., Live Oak and St. Augustine, Florida, 4 FCC Rcd 758, note 4 (Policy and Rules Div. 1989).

² See Modification of FM and TV Authorizations to Specify a New Community of License, (“Community of License”), 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990).

of FM Assignment Policies and Procedures (“FM Priorities”), 90 FCC 2d 88 (1982).³

3. In its petition for rulemaking, Jodesha states that Oakville, Washington is an incorporated community with a population of 665 persons,⁴ local fire and police departments, a public library, and a municipal court. Our engineering staff has compared the coverage of Station KFMY from its existing site with the coverage that the station would realize if it were to operate from the proposed Oakville reference site for Channel 249C1. This analysis shows that if KFMY were to relocate to the Oakville reference site, about 33,894 persons and a land area of 1,138.5 square kilometers would lose service from KFMY but would continue to receive aural service from at least 5 stations, whereas a total of about 1,481 persons and a land area of 703 square kilometers would gain service. The gain area includes an area of 294.4 square kilometers with a population of 357 persons who currently receive one aural service and an area of 195.2 square kilometers with 73 persons who currently receive two aural services. Our staff also compared the coverage of Station KJET at its present location in South Bend with its proposed location in Raymond. Such a move would result in a loss area (minus water area) of about 2,362.9 square kilometers with a population of 10,604 persons, but the loss area would continue to receive 5 or more aural services. The gain area (minus water area) would cover about 1,802.8 square kilometers with a population of 9,946 and contains an area of 245.6 square kilometers with a population of 688 that currently receives three aural services and an area of 266.7 square kilometers with a population of 758 persons who currently receive four aural services.

4. 3 Cities’ “Comments in Opposition to Proposed Rulemaking” claims that Oakville does not constitute a “community” for allotment purposes because Jodesha has not explained what businesses, and political or social organizations exist in Oakville. 3 Cities also asserts that the population of Oakville is 493 persons according to the current U.S. Census Gazetteer, as opposed to the population figure of 665 persons claimed by Jodesha. 3 Cities alleges that the allotment of Channel 249C1 to Oakville would result in significant coverage of the Olympia Urbanized area, thus raising a question as to whether Jodesha’s reallocation proposal is really an attempt to provide an additional reception service for Olympia rather than a new transmission service for Oakville.⁵ Lastly, 3 Cities states that the proposal to remove the only existing FM station from South Bend is contrary to the public interest, even though Channel 300A would replace the existing channel. In this regard, 3 Cities observes that the Commission has stated the following:

³ The FM allotment priorities are as follows: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. [Co-equal weight is afforded priorities (2) and (3).]

⁴ The petition for rulemaking stated that Oakville’s population was 665 persons according to the 1990 U.S. Census. As stated in paragraph 5 of this Report and Order, Jodesha explained that it was actually relying on 1997 population data from the State of Washington for its figure of 665 persons. Further, as observed in paragraph 8 of this Report and order, the 2000 U.S. Census lists Oakville’s population at 675 persons.

⁵ 3 Cities cites Huntington Broadcasting Co. v. FCC, 192 F.2d 33, 35 (D.C. Cir. 1951) and Faye and Richard Tuck, 3 FCC 5374 (1988) for this proposition.

replacement of an operating station with a vacant allotment...although a factor to be considered in favor of the proposal, does not adequately cure the disruption to "existing service" occasioned by removal of an operating station.

Community of License, 5 FCC Rcd 7094, 7097 at para. 19. 3 Cities notes that Jodesha has not stated its commitment to apply for, build, and operate a new station in South Bend on the requested new channel, thus rendering the proposal a nullity.

5. Jodesha's Reply Comments includes a declaration under penalty of perjury from Jodesha's President, William J. Wolfenbarger, which asserts that Oakville has the combination of political, social and commercial organizations and services which make it a "community" for allotment purposes. Mr. Wolfenbarger's declaration explains that Oakville is an incorporated community that operates under a mayor-council form of government with five council members and a mayor, provides water service to residents of Oakville, maintains a local park, has its own police department, public works department, post office and postal service, and municipal court. He states that local fire services are provided by the Grays Harbor County Fire District #1, a volunteer fire service, and that Oakville has its own Public School District #400, which is administered by Grays Harbor County, and includes an elementary school, middle school and high school. He lists 23 businesses, three churches, and four civic organizations and clubs that are located in Oakville. He also asserts that even though the initial 1990 U.S. Census of Population and Housing shows Oakville as having 493 residents, that figure was adjusted by the Census to show that Oakville had 529 residents in 1990. He observes that, in its petition for rulemaking, Jodesha used more current population data that it obtained from the State of Washington's Office of Financial Management, Forecasting Division, which states that the population of Oakville in April 1997 was 665 persons. Further, he asserts that if the Commission adopts Jodesha's proposals for changes in the FM allotments at Raymond, South Bend, and Oakville, Washington, Jodesha will file an application for the new Class A channel proposed for South Bend and will promptly construct on that channel if its application is granted. He also states that, in order to ensure the continuity of local transmission service in South Bend, Jodesha will not implement the changes in the existing allotments for South Bend and Raymond until the station authorized on the new South Bend channel is operational, unless a party other than Jodesha experiences a delay in constructing the South Bend station and "Jodesha is required to implement the other two allotment changes in order to preserve its construction permits for those changes."

6. With respect to 3 Cities' allegation that Jodesha's proposal to provide first local service to Oakville should be treated as a proposal to serve Olympia because the Oakville allotment would result in significant coverage of the Olympia Urbanized Area, Jodesha argues that Oakville is not part of, or adjacent to, the Olympia Urbanized Area. Jodesha claims that Oakville is situated about 22 kilometers, as the "crow flies," from the border of the Olympia Urbanized Area and that 3 Cities has offered no significant information to

indicate that Oakville is dependent upon Olympia for governmental services or in any other respect. Further, Jodesha claims that while a station operating on Channel 249C1 from the proposed Oakville reference site would provide city grade coverage to a portion of the Olympia Urbanized Area, the coverage that would result from a station operating from the Oakville reference point (61 percent of the Olympia Urbanized Area) is 21 percent less than the city grade coverage of the Olympia urbanized area that is currently provided by Station KFMY from its existing site as a Raymond, Washington, FM station. In this light, Jodesha argues that no special showing is required to demonstrate that Oakville is independent of Olympia.

7. In its Supplement to Reply Comments, 3 Cities states that it sent one of its employees to Oakville to obtain information about the community. The employee made two visits to Oakville and submitted a declaration under penalty of perjury concerning those visits that 3 Cities attaches to its pleading. The employee's declaration notes, *inter alia*, that some residents of Oakville referred to it as a "bedroom community," that Oakville has no traffic lights, movie theater, or hospital, and that the city hall, police station, courthouse and library are all located in different rooms in a single one-story building. The employee also declares that he mailed himself a letter from the Oakville post office and it arrived several days later postmarked "Olympia." In response to Jodesha's claim that it is "ludicrous" to suggest that its proposed change in community from Raymond to Oakville would result in an increased identification and service to Olympia, 3 Cities observes that even though Jodesha proposes to initially use Station KFMY's existing transmitter site, once the city of license is changed to Oakville, Jodesha would be free to move its transmitter closer to Olympia.

8. After having reviewed the facts and pleadings in this proceeding, we find that Oakville is a community entitled to an FM allotment pursuant to Section 307(b) of the Communications Act of 1934, as amended. In this regard, despite the relatively small size of Oakville's population (675 persons according to the 2000 U.S. Census), it is clear that Oakville falls within the parameters of what the Commission considers to be a community.⁶ If an FM licensee intends to change its community of license by moving its authorized facility from a rural community to a suburban community that is adjacent to an urbanized area and to place a city grade (70 dBu) signal over 50 percent or more of the urbanized area, the licensee must demonstrate that the intended city of license is sufficiently independent of the central city to justify a first local service preference.⁷ Nevertheless, if a licensee proposes to change its community of license, the new community is not in the nearby urbanized area, and the licensee already serves more than 50% of the urbanized area and will continue to

⁶ See Semora, North Carolina, et al., 5 FCC Rcd 934 (1990). We observe that the statements of fact made by Mr. Wolfenbarger that are summarized in paragraph 5 of this Report and Order are not inconsistent with the statements made by 3 Cities and its employee in 3 Cities' Supplement to Reply Comments.

⁷ See Headland, Alabama and Chattahoochee, Florida ("Headland"), 10 FCC Rcd 10352 (Allocations Br. 1995).

serve more than 50 percent of the urbanized area if its change of community proposal is granted, no special showing under Headland, Alabama and Chattoochee, Florida (“Headland”), 10 FCC Rcd 10352 (1995) is required.⁸ Thus, since our engineering studies indicate that Station KFMY already covers about 80 percent of the Olympia Urbanized Area and will continue to cover more than 60 percent of that urbanized area, no Headland showing is required in this case.

9. Having made the foregoing decisions, we must determine whether Jodesha’s overall proposal would result in a preferential arrangement of allotments. To do so, we must compare the existing and proposed arrangements of allotments using the allotment priorities set forth in Revision of FM Assignment Policies and Procedures (“FM Priorities”), supra at note 2. At present, both Raymond and South Bend, Washington have FM channels providing first local service to each community. Since Jodesha’s proposal to reallocate Channel 249C1 from Raymond to Oakville, to reallocate Channel 289C2 from South Bend to Raymond, and to allocate Channel 300A to South Bend would result in providing first local service to three communities, as opposed to the two communities currently provided with first local service, and since Jodesha’s proposal would result in the retention of local service to Raymond and South Bend, we find it is in the public interest to grant Jodesha’s proposal under priority (3) of the FM Priorities. In line with the concerns expressed by 3 Cities and to ensure that local service will continue to be provided to South Bend, Washington, we shall condition the grant of program test authority for Station KJET to operate as a Raymond station on the activation of service for a new FM station on Channel 300A, South Bend. In turn, to assure a continuation of local service at Raymond, we shall condition the grant of program test authority for Station KFMY to operate as an Oakville station on the activation of Station KJET as a Raymond station on Channel 289C2.

10. Channel 249C1 can be allotted to Oakville in conformity with the minimum distance separation requirements of Section 73.207(b) of the Commission’s Rules with a site restriction of 23.4 kilometers (14.5 miles) northwest.⁹ Channel 289C2 can be reallocated to Raymond in compliance with the Commission’s minimum distance separation requirements with a site restriction of 27 kilometers (16.8 miles) north.¹⁰ Channel 300A can be allotted to South Bend with a site restriction of 3.5 kilometers (2.2 miles) southwest.¹¹ The proposed

⁸ See, e.g., Boulder and LaFayette, Colorado, 11 FCC Rcd 3632 (1990) and Moncks Corner, South Carolina, et al., 15 FCC Rcd 8973 (2000).

⁹ The coordinates for Channel 249C1 at Oakville are 46-57-14 North Latitude and 123-29-21 West Longitude. This allotment is a specially negotiated, short-spaced allotment that has received the concurrence of the Canadian government. The allotment is limited to 26kW effective radiated power and 300 meters height above average terrain or the equivalent along the 8.2 azimuth toward Channel 249C in Vancouver, British Columbia.

¹⁰ The coordinates for Channel 289C2 at Raymond are 46-55-53 North Latitude and 123-44-02 West Longitude.

¹¹ The coordinates for Channel 300A at South Bend are 46-38-19 North Latitude and 123-49-54 West

allotments for Oakville, Raymond, and South Bend are located within 320 kilometers (200 miles) of the U.S.-Canadian border and have received the concurrence of the Canadian government.

11. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective March 4, 2002, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, as follows:

<u>Community</u>	<u>Channel Number</u>
Oakville, Washington	249C1
Raymond, Washington	289C2
South Bend, Washington	300A

12. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Jodesha Broadcasting, Inc. for Station KFMY(FM) Channel 249C1, Raymond, Washington, IS MODIFIED to specify operation on Channel 249C1 at Oakville, Washington, subject to the following conditions:

(a) Within 90 days of the effective date of this Report and Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 upon activation of Channel 289C2 at Raymond, Washington; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

13. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Jodesha Broadcasting, Inc. for Station KJET(FM) Channel 289C2, South Bend, Washington, IS MODIFIED to specify operation on Channel 289C2 at Raymond, Washington, subject to the following conditions:

(a) Within 90 days of the effective date of this Report and order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;

Longitude.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620 of the Commission's Rules upon activation of Channel 300A at South Bend; and

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

14. Pursuant to Commission Rule Sections 1.1104(1)(k) and (3)(l), any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, IF THE REQUEST IS GRANTED, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Jodesha Broadcasting, Inc., licensee of Station KFMY and Station KJET, is required to submit rule making fees in addition to the fees required for the applications to effect the changes in community of license from Raymond to Oakville, Washington and from South Bend to Raymond, Washington.

15. A filing window for Channel 300A, South Bend, Washington, will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

16. IT IS FURTHER ORDERED That this proceeding IS TERMINATED.

17. For further information concerning the above, contact R. Barthen Gorman, Mass Media Bureau, (202) 418-2180. Questions related to the application filing process for Channel 300A at South Bend, Washington, should be addressed to the Audio Services Division, Mass Media Bureau, (202) 418-2700.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau